

6 Official Opinions of the Compliance Board 161 (2009)

Minutes – Preparation within reasonable time required.

September 8, 2009

Gary E. Coldsmith

The Open Meetings Compliance Board has considered your complaint alleging that the Chesapeake Beach Town Council violated the Open Meetings Act by its failure to produce minutes of a budget work session. For the reasons set forth below, we find that the Council's failure to produce minutes in a timely fashion following the meeting did indeed violate the Act.

I

Complaint and Response

According to the complaint, the Chesapeake Beach Town Council held a budget work session on May 7, 2009. This was an open meeting, but no minutes were recorded. Normally, the Council's meetings are recorded and written minutes are then prepared before the next meeting. However, when a copy of the minutes of the budget work session was requested, the Town Administrator indicated that minutes were not available. According to the complaint, you were told that, as a matter of policy, minutes are not produced for Council work sessions.

In a timely response on behalf of the Town Council, Elissa Levan, Esquire, noted that the Council held a special meeting on May 7, 2009, and minutes of this meeting were approved on June 11, 2009. However, following the special meeting, a budget work session was conducted in accordance with the Town's charter. Notice of the budget work session was provided and the work session was open to the public. The Town's legal counsel was not present for the meeting and, because Council work sessions are "somewhat infrequent, there was some confusion on the part of staff about the fact that minutes of work sessions meetings were required."

The response acknowledged that minutes for the work session were not initially prepared. However, after being advised of the error, the Town Administrator promptly prepared minutes for the work session. A copy of the

minutes was included with the response. The response further noted that, in the future, work session minutes “will be prepared in the ordinary course, just as minutes of all regular meetings are prepared.”

II

Analysis

Given the Council’s admission, detailed discussion is unnecessary. When a public body such as the Chesapeake Beach Town Council conducts a meeting that is subject to the Open Meetings Act,¹ certain procedures must be followed. One requirement is that minutes of the meeting must be produced: “[a]s soon as practicable after a public body meets, it shall have written minutes of its session prepared.” § 10-509(b).² At a minimum, the minutes must reflect each item considered, any action taken on those items, and each recorded vote. § 10-509(a)(2) and (c)(1). The Act draws no distinction between regular meetings of a public body and sessions identified by another name such as “work session.” If the meeting is governed by the Act, minutes are required. 6 *OMCB Opinions* 47, 51 (2008); 5 *OMCB Opinions* 50, 53 (2006).

The response acknowledged that minutes were not promptly produced after the May 7 work session. As noted above, minutes are to be produced “[a]s soon as practicable.” As a general rule, minutes should be available on a cycle that parallels a public body’s meetings, with the only lag time being that necessary for drafting and review. We have, however, recognized that occasionally special circumstances might justify a brief delay. *See, e.g.*, 6 *OMCB Opinions* 85, 87 (2009). In this case, minutes were produced shortly after the omission was brought to the Town Administrator’s attention. Here the Council met at least twice between the May 7 meeting and production of the minutes and the only explanation given was a misunderstanding about whether minutes were required. Under the circumstances, we find that the Council violated the Act by failing to produce minutes of the May 7 meeting

¹ The Council did not suggest that the meeting involved an administrative function outside the scope of the Open Meetings Act; therefore, we assume that the Act applied to the session.

² All statutory references are to the Open Meetings Act, Title 10, Subtitle 5 of the State Government Article, Annotated Code of Maryland.

in a timely fashion. We acknowledge the Council's actions that should ensure that this omission is avoided in the future.³

III

Conclusion

We find the Council violated the Open Meetings Act by failing to produce minutes following its budget work session on May 7, 2009 in a timely fashion.

OPEN MEETINGS COMPLIANCE BOARD

Elizabeth L. Nilson, Esquire
Courtney J. McKeldin
Julio Morales, Esquire

³ Based on the document submitted, it is not clear whether the Council had ever actually approved the minutes of the May 7 work session. Absent approval, it cannot be said that the minutes are truly the minutes of the Council. *See 3 OMCB Opinions* 303, 306 (2003). If the minutes had not been officially adopted, we would encourage the Council to do so.